

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROBERT E. GARCIA, *pro se*,

Plaintiff,

-against-

MICHAEL FALK, et al.,

Defendants.
-----X

ORDER
09-cv-2045 (DLI)(LB)

ROBERT E. GARCIA, *pro se*,

Plaintiff,

-against-

MICHAEL FALK, et al.,

Defendants.
-----X

ORDER
10-cv-1688 (DLI)(LB)

DORA L. IRIZARRY, United States District Judge:

On December 31, 2009, after a document that had been sent to plaintiff was returned as undeliverable, United States Magistrate Judge Lois Bloom issued an Order directing plaintiff to contact the court by January 30, 2010 and provide it with his current address and warning him that she would otherwise recommend that the case be dismissed without prejudice. (*See* Docket Number 09-cv-2045, Docket Entry 17.) By Order dated March 16, 2010, the court dismissed the action without prejudice after plaintiff failed to contact the court. Apparently unaware that he had been ordered to provide his current address, or that his case had been dismissed, plaintiff filed a letter, dated March 18, 2010, requesting additional time to respond to defendants' motion to dismiss (filed on October 23, 2009, *see* Docket Number 09-cv-2045, Docket Entry 13) because he "has been transferred several times" and has not "had the time or access to the law library

because of all the transfers from one facility to the other.” (Docket Number 09-cv-2045, Docket Entry 21.) After plaintiff learned that his case had been dismissed, he filed another letter, dated March 25, 2010, requesting “the proper forms to resubmit this case.” (Docket Number 09-cv-2045, Docket Entry 22.) On April 9, 2010, plaintiff initiated a second action against defendants pursuant to 42 U.S.C. § 1983, alleging the same events. (*See* Docket Number 10-cv-1688.)

The court liberally construes plaintiff’s March 18 and March 25 letters as a motion for reconsideration under Rule 59(e) of the Federal Rules of Civil Procedure. Defendants have not responded to plaintiff’s motion. Plaintiff’s motion is granted.

It appears that plaintiff had been transferred to a different facility and was not receiving the correspondence from the court. Moreover, plaintiff’s letters demonstrate his intent to prosecute the action. Accordingly, the court grants plaintiff’s request for reconsideration pursuant to FED. R. CIV. P. 59(e) and vacates the court’s judgment. The Clerk of Court is directed to reopen this case.¹

Plaintiff shall oppose defendants’ motion to dismiss the complaint within 30 days from the entry date of this Order, *i.e.* September 10, 2010. The case is referred to the Honorable Lois Bloom, United States Magistrate Judge, for pretrial supervision. Attached for plaintiff’s convenience are instructions from the court’s Pro Se Office on how to oppose a motion.

With regard to the action that plaintiff filed on April 9, 2010, it raises no new allegations; thus, no useful purpose would be served by the filing and litigation of this duplicate complaint. Accordingly, the complaint, filed *in forma pauperis*, is dismissed without prejudice to the litigation already pending. *See Curtis v. Citibank, N.A.*, 226 F.3d 133, 138 (2d Cir. 2000) (“As

¹ In his letter dated March 25, 2010, plaintiff asks whether he has to pay the \$350 fee again. (*See* Docket Number 09-cv-2045, Docket Entry 22.) As his case is merely being reopened, an additional fee is unnecessary.

part of its general power to administer its docket, a district court may stay or dismiss a suit that is duplicative of another federal court suit.”). The Clerk of Court shall not collect the filing fee pursuant to the Prison Litigation Reform Act for this duplicate action, *i.e.*, Docket No. 10-cv-1688. The Court certifies pursuant to 28 U.S.C. § 1915(a) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). The Clerk of Court is directed to close the case under docket number 10-cv-1688.

SO ORDERED.

Dated: Brooklyn, New York
August 10, 2010

/s/

DORA L. IRIZARRY
United States District Judge

INSTRUCTIONS FOR OPPOSING A MOTION

1. A motion requests the Court to take action under a specific Federal Rule. To oppose a motion, you must prepare an affidavit or affirmation. You will title your submission as appropriate, for example: plaintiff's opposition to defendant's motion to dismiss or for summary judgment. A form is attached to these instructions. **DO NOT USE THIS FORM AS YOUR AFFIDAVIT OR AFFIRMATION.** *The form is only provided as a guide.* You should draft your own affidavit or affirmation in opposition to the motion.

An affirmation is a statement which is made under penalty of perjury. An affidavit is sworn to before a licensed notary public of the state. When using the affidavit/ affirmation form, only use the terms which apply to the type of form you are submitting.

2. If you are opposing a motion for summary judgment, your affidavit or affirmation should attach and refer to any relevant exhibits. You may also attach affidavits or affirmations from other people who have personal knowledge of relevant information regarding the motion.
3. You may also submit a memorandum of law to explain what the law is and how it applies to the facts of your case. However, any facts on which you rely must be in an affidavit or affirmation; it is not sufficient to state facts in a memorandum of law. Similarly, the affidavit or affirmation should contain only facts; do not include any references to the law in your affidavit or affirmation. If you prepare a memorandum of law, it must be sent along with your affirmation/affidavit to each defendant or his/her attorney(s).
4. Make a copy of the papers you have prepared for each defendant or his or her attorney. If several defendants share the same attorney, you need only make one copy for that attorney. **You must retain a copy of the opposition papers for yourself.**
5. Mail (or hand deliver) a copy of your opposition papers to the defendants or their attorney(s). First class mail is sufficient.
6. Complete an affirmation of service (see attached). Attach the affirmation of service to the original papers for filing with the court.
7. Unless your judge's individual rules specify otherwise, bring or mail the original opposition papers (with the affirmation of service attached) to the Pro Se Office at least (10) ten business days after service of the moving papers, (4) four business days if you are responding to a discovery motion. **REFER TO RULE 6 OF THE FEDERAL RULES OF CIVIL PROCEDURE (ATTACHED HERETO). YOU SHOULD ALSO REFER TO THE RULE REFERRED TO IN DEFENDANT'S MOTION.**

8. You should also submit an extra "courtesy" copy to the Pro Se Office for forwarding directly to the Judge. Please write "courtesy copy" in the upper right corner of the extra copy for the Judge.
9. If you need additional time to submit your opposition papers, try to obtain your adversary's consent. If possible, get their consent in writing. If the other side does not consent, you will need to write to the assigned judge to request an extension (also called enlargement) of time. You must request an extension of time before the deadline you are seeking to extend expires.

NOTE: This illustrates the FORM for an affidavit or affirmation in opposition to a motion. The CONTENT of your affidavit or affirmation depends on the facts of your case. Please draft your own affidavit or affirmation using this form as a guide.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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_____,
[insert your name] Plaintiff, _____ CV _____ ()
[insert docket number
and judge's initials]
-against-

_____,
[insert name] Defendants. PLAINTIFF'S
AFFIDAVIT/AFFIRMATION
IN OPPOSITION TO
DEFENDANT'S MOTION

-----X

STATE OF NEW YORK)
SS.
COUNTY OF _____)

_____, affirms the following
[your name]

under penalty of perjury:

or

being duly sworn, deposes and says:

1. I am the plaintiff in this action, and I respectfully submit this affidavit/affirmation in opposition to the motion dated

_____, made by _____
[date of the motion] [name of moving party]

2. I have personal knowledge of facts which bear on this motion.

3. The motion should be denied because _____
[state the facts in detail which show that the relief requested in the motion is improper. Use as many pages as needed; number all your paragraphs. Review defendant's motion paragraph by paragraph. In your own separately numbered paragraphs, state the facts, providing dates. If you are opposing a summary judgment motion, you must attach relevant documents and refer to the documents in your opposition.] In view of the foregoing, it is respectfully submitted that the motion should be denied.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

[signature]

[type or print name]

Address

OR:

Sworn to me before this _____ day of _____, 20____
[sign before a licensed notary public of this state].

[Signature]

[Type or print name]

Notary Public

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

_____,
Plaintiff, _____ CV _____ ()

-against-

_____,
Defendants. PLAINTIFF'S
AFFIDAVIT/AFFIRMATION
IN OPPOSITION TO
DEFENDANT'S MOTION

-----X

STATE OF NEW YORK)
SS.
COUNTY OF _____)

_____, affirms the following
under penalty of perjury:

or

being duly sworn, deposes and says:

1. I am the plaintiff in this action, and I respectfully submit
this affidavit/affirmation in opposition to the motion dated

_____, _____, made by _____

2. I have personal knowledge of facts which bear on this
motion.

3. The motion should be denied because _____

(You may use additional 8 1/2 x 11 paper if needed)

In view of the foregoing, it is respectfully submitted that the motion should be denied.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

Signature, Pro Se Plaintiff

Name

Address

OR:

Sworn to me before this

_____ day of _____, 20____

Notary Public

Signature, Pro Se Plaintiff

Name

Address

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____ X

Affirmation of Service

Plaintiff,

-against-

_____ CV _____ ()

Defendants.

_____ X

I, _____, declare under penalty of perjury that I
have served a copy of the attached affirmation/affidavit in
opposition to defendant's motion upon: _____
whose address is _____
_____.

Dated: _____
 , New York

Signature

Address

City, State & Zip code

Telephone